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NEW APPLICATION

ORIGINAL

BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

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ARIZONA CORPORATION COMMISSION
DOCKET CONTROLCOMMISSIONERS

DOCKETED

2017 JUN -1 A 11: 12

TOM FORESE - Chairman
BOB BURNS
DOUG LITTLE
ANDY TOBIN
BOYD DUNN

JUN 1 2017

DOCKETED BY

In the matter of:

DOCKET NO. S-20856A-17-0165

Donna Kay Beers, CRD # 1172038, and
James Beers, wife and husband, and**NOTICE OF OPPORTUNITY FOR HEARING
REGARDING PROPOSED ORDER TO CEASE
AND DESIST, ORDER FOR RESTITUTION,
ORDER FOR ADMINISTRATIVE
PENALTIES AND ORDER FOR OTHER
AFFIRMATIVE ACTION**Caesar Investments, LLC, an Arizona
Limited Liability Company,

Respondents.

NOTICE: EACH RESPONDENT HAS 10 DAYS TO REQUEST A HEARING**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents Donna Kay Beers (CRD # 1172038) and Caesar Investments, LLC have engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") and Arizona Investment Management Act, A.R.S. § 44-3101 *et seq.* ("IM Act").

The Division also alleges that Donna Kay Beers and James Beers are persons controlling Caesar Investments, LLC within the meaning of A.R.S. § 44-1999(B), so that they are jointly and severally liable under A.R.S. § 44-1999(B) to the same extent as Caesar Investments, LLC for its violations of the antifraud provisions of the Securities Act.

I.**JURISDICTION**

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution, the Securities Act and the IM Act.

II.

RESPONDENTS

2. Donna Kay Beers ("Beers") (CRD # 1172038) was previously registered as a securities salesperson by the Commission from January 17, 2001, until July 30, 2013, when the Commission revoked her registration.

3. Beers was also previously licensed as an investment advisor representative by the Commission from October 15, 2001, until December 31, 2008; and again from January 21, 2009, until September 30, 2009.

4. Since June 1, 2006, Beers has also been a licensed insurance producer, Arizona License No. 866264.

5. Since at least 1999 through the present, Beers has resided in Fountain Hills, Arizona.

6. At all relevant times Beers has been married to James Beers.

7. James Beers is joined in this action under A.R.S. § 44-2031(C) and A.R.S. § 44-3291(C) for purposes of determining the liability of his and Beers' marital community, and as a controlling person of Caesar Investments, LLC within the meaning of A.R.S. § 44-1999(B).

8. At all relevant times, Beers and James Beers were acting for their own benefit and for the benefit or in furtherance of their marital community.

9. Caesar Investments, LLC ("Caesar Investments") is an Arizona limited liability company that Beers organized on March 5, 2008. Beers and James Beers are the members and managers of Caesar Investments. Beers and James Beers each own a fifty percent (50%) interest in Caesar Investments.

10. Beers, James Beers and Caesar Investments may be referred to collectively as "Respondents."

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III.

FACTS

11. On July 30, 2013, in Decision No. 74017, the Commission entered an Order to Cease and Desist, Order of Revocation, Order for Restitution, Order for Administrative Penalties and Consent to Same ("2013 Order") executed by Beers and James Beers.

12. In the 2013 Order, the Commission found that Beers had violated the antifraud provisions of the Securities Act and the IM Act, A.R.S. §§ 44-1991 and 44-3292, respectively. The Commission also found that Beers had engaged in dishonest and unethical conduct within the meaning of A.R.S. § 44-1962(A)(10) and R14-4-130(A)(4).

13. Among other remedies it ordered, the Commission revoked Beers' securities salesperson registration and ordered her to permanently cease and desist from violating the Securities Act and IM Act.

14. In addition to the Commission's 2013 Order against her, on May 20, 2011, the Maricopa Superior Court entered a civil judgment against Beers in the principal amount of \$53,091.32 and in favor of Meridian Bank, N.A., plus the bank's attorneys' fees and costs (the "Meridian Bank Judgment"). Interest accrues on the Meridian Bank Judgment at the annual rate of ten percent (10%).

15. As of March 31, 2017, Beers owed \$92,274.21 on the Meridian Bank Judgment.

April 2014: Beers and Caesar Solicit a \$25,000 Investment.

16. In early 2014, Beers solicited an investor whose initials are "DR", and who had been a client of Beers before the Commission revoked Beers' securities salesperson registration, to invest in Caesar Investments. Beers never clearly told DR what Caesar Investments would use his money for, but she said he would receive ten-percent annual interest. Beers also told DR he could get his money back at any time.

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1 17. DR invested \$25,000.00 by two checks made payable to Caesar Investments. The
2 first check was dated April 1, 2014, payable in the amount of \$15,000.00. The second check was
3 dated April 30, 2014, payable in the amount of \$10,000.00.

4 18. DR's two checks were deposited to Caesar Investments' JP Morgan Chase Bank
5 account ending in Xx4424.

6 19. Beers and James Beers are the two authorized signers on Caesar Investments' JP
7 Morgan Chase Bank account ending in Xx4424.

8 20. Despite DR's requests, Respondents have not accounted for or repaid any of DR's
9 \$25,000.00 investment.

10 **June 2015: Beers and Caesar Solicit and Misuse a \$26,000 Investment.**

11 21. On March 31, 2015, a Notice of Trustee's Sale was recorded in Maricopa County
12 stating that Beers' and James Beers' home in Fountain Hills was scheduled to be sold at a public
13 auction on July 6, 2015.

14 22. On May 11, 2015, Wells Fargo Home Mortgage ("Wells Fargo") sent Beers and James
15 Beers correspondence stating they were several months delinquent and owed \$23,547.61 for past due
16 mortgage payments, late fees and a foreclosure fee. Wells Fargo's correspondence stated: "This is
17 an active foreclosure case."

18 23. In early June 2015, Beers contacted an investor whose initials are "JS", and who had
19 been a client of Beers before the Commission revoked Beers' securities salesperson registration.
20 Beers told JS he had money in an IRA account that needed to be rolled over. Beers suggested JS and
21 his wife, "ES", invest that money in a company called Caesar Investments.

22 24. JS stressed to Beers that he did not want to "cash this money out" from his IRA
23 because then he would have to pay taxes and penalties on it. Beers misrepresented to JS that the
24 investment proceeds coming from his IRA would be a "roll-over asset" and he would not have to pay
25 taxes or penalties on those funds if he invested with Caesar Investments.

26 25. Beers did not disclose to JS that she and James Beers owned Caesar Investments.

1 26. Beers did not disclose to JS that she and James Beers were facing the potential loss of
2 their home because they owed Wells Fargo \$23,547.61 for past due payments, late fees and a
3 foreclosure fee.

4 27. JS agreed to invest in Caesar Investments. On June 12, 2015, JS's wife, ES, wrote a
5 \$26,000.00 check payable to Caesar Investments with the notation "IRA" on the check.

6 28. Before JS invested, Beers did not tell him what form his investment in Caesar
7 Investments would take. After he invested, however, JS received a Promissory Note Agreement
8 stating that on June 9, 2016, he would receive repayment of his \$26,000.00 plus eight percent (8%)
9 interest.

10 29. The signature line on Promissory Note Agreement identified Beers as Caesar
11 Investments' manager.

12 30. On June 15, 2015, JS' and ES' \$26,000.00 check was deposited to Caesar
13 Investments' JP Morgan Chase Bank account ending in Xx4424. The \$26,000.00 deposit increased
14 the account balance to \$28,594.24.

15 31. Between June 15 and June 29, 2015, Respondents used at least \$24,698.51 of JS' and
16 ES' \$26,000.00 investment funds to make cash withdrawals and to pay personal debts and living
17 expenses of Beers and James Beers.

18 32. Among the payments Respondents made using JS' and ES' investment funds was a
19 \$23,547.61 payment to Wells Fargo for the past due mortgage payments and fees Beers and James
20 Beers owed in order to avoid the then-scheduled foreclosure of their home.

21 33. After Respondents made the \$23,547.61 payment for past due mortgage payments and
22 fees, Wells Fargo cancelled the Trustee's Sale of the Beers' home.

23 34. Contrary to Beers' misrepresentation to JS before he and ES invested, JS was assessed
24 taxes and a penalty for taking the \$26,000.00 distribution to invest in Caesar Investments.

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August-September 2015: Beers Solicits and Misuses a \$3,700 Investment.

35. On August 18, 2015, an investor whose initials are "MK", and who had been a client of Beers before the Commission revoked Beers' securities salesperson registration, emailed Beers. MK wrote that he had money in his 401K account that he needed to roll into another retirement account.

36. Beers replied, "We can ... roll it into your [IRA] account with Equity Institutional."

37. On September 1, 2015, MK emailed Beers that his 401K account "is closed out and the check will be coming your way shortly."

38. Beers replied to MK, "You can make it out to me and I will see that it gets taken care of."

39. Beers also instructed MK to send his check to her home address rather than to her office.

40. On September 13, 2015, MK wrote a \$3,700.00 check payable to "Donna Beers" with the notation "401K Rollover" on it.

41. On September 17, 2015, Beers deposited MK's \$3,700.00 check to Caesar Investments' JP Morgan Chase Bank account ending in Xx4424.

42. Between September 17 and September 24, 2015, Respondents used at least \$3,352.88 of MK's \$3,700.00 investment funds to dine in restaurants, go to a salon, and pay Beers' and James Beers' American Express bill.

43. Despite MK's requests, Respondents have not accounted for MK's \$3,700.00 investment.

October 2015: Beers and Caesar Solicit and Misuse a \$39,000 Investment.

44. In October 2015, Beers solicited DR to invest another \$39,000.00 in Caesar Investments.

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1 45. As with his previous investment from April 2014, Beers did not tell DR what Caesar
2 Investments would use his money for, but she said he would be paid 9% to 10% interest. She also
3 said DR could get his money back at any time.

4 46. Beers further told DR there was no risk because she personally guaranteed his money.

5 47. On October 5, 2015, DR wrote a \$39,000.00 check payable to Caesar Investments.

6 48. On October 6, 2015, Beers deposited DR's \$39,000.00 check to Caesar Investments'
7 JP Morgan Chase Bank account ending in Xx4424.

8 49. Before Beers deposited DR's \$39,000.00, Caesar Investments' account had a balance
9 of \$323.84.

10 50. Between October 7 and October 20, 2017, Respondents used at least \$19,227.19 of
11 DR's \$39,000.00 investment funds to make cash withdrawals, to transfer funds to a relative of Beers,
12 and to pay personal debts and living expenses of Beers and James Beers.

13 51. Among the payments Respondents made using DR's investment funds was a
14 \$5,000.00 check to James Beers; a \$3,000.00 wire transfer to another relative of Beers; a \$2,484.60
15 mortgage payment; and a \$2,354.64 payment to American Express.

16 52. Beers never informed DR, JS or MK that the Commission had revoked her securities
17 salesperson registration and ordered her to cease and desist from violating the Securities Act and IM
18 Act.

19 53. Beers never informed DR, JS or MK that when they invested through her, Meridian
20 Bank had an unpaid civil judgment against her.

21 54. Beers never informed DR, JS or MK that when they invested through her, she and/or
22 the other Respondents would use these investors' funds to pay her and her husband's personal debts
23 and living expenses.

24 55. DR, JS and MK never would have invested with Respondents in 2014 and 2015 if
25 they knew: (i) of the Commission's 2013 Order revoking Beers' securities salesperson registration
26 and ordering her to cease and desist from violating the Securities Act and IM Act; (ii) Meridian Bank

1 had an unpaid civil judgment against Beers; or (iii) Respondents would use the investment funds to
2 pay Beers' and James Beers' personal debts and living expenses.

3 56. Respondents have not repaid any of the \$64,000.00 DR entrusted to them to invest on
4 his behalf; any of the \$26,000.00 JS entrusted to them to invest on his behalf; or any of the \$3,700.00
5 MK entrusted to them to invest on his behalf.

6 **IV.**

7 **VIOLATION OF A.R.S. § 44-1841**

8 **(Offer or Sale of Unregistered Securities)**

9 57. From at least April 1, 2014, through at least October 6, 2015, Beers and Caesar
10 Investments offered or sold securities in the form of investment contracts, notes and/or evidences of
11 indebtedness, within or from Arizona.

12 58. The securities referred to above were not registered pursuant to Articles 6 or 7 of the
13 Securities Act.

14 59. This conduct violates A.R.S. § 44-1841.

15 **V.**

16 **VIOLATION OF A.R.S. § 44-1842**

17 **(Transactions by Unregistered Dealers or Salesmen)**

18 60. From at least April 1, 2014, through at least October 6, 2015, Beers and Caesar
19 Investments offered or sold securities within or from Arizona while not registered as dealers or salesmen
20 pursuant to Article 9 of the Securities Act.

21 61. This conduct violates A.R.S. § 44-1842.

22 **VI.**

23 **VIOLATION OF A.R.S. § 44-1991**

24 **(Fraud in Connection with the Offer or Sale of Securities)**

25 62. In connection with the offer or sale of securities within or from Arizona, Beers and
26 Caesar Investments directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made

1 untrue statements of material fact or omitted to state material facts that were necessary in order to make
2 the statements made not misleading in light of the circumstances under which they were made; and/or
3 (iii) engaged in transactions, practices, or courses of business that operated or would operate as a fraud
4 or deceit upon offerees and investors. Beers' and Caesar Investments' conduct includes, but is not
5 limited to, the following:

6 a) Failing to disclose to DR, JS and MK in 2014 and 2015 when they invested
7 that in its 2013 Order the Commission revoked Beers' securities salesperson registration and ordered
8 her to cease and desist from violating the Securities Act and IM Act;

9 b) With respect to DR's investments of April 2014 and October 2015,
10 misrepresenting that DR could get his money back at any time;

11 c) With respect to DR's investment of October 2015, misrepresenting that there was
12 no risk because Beers personally guaranteed his money;

13 d) Misrepresenting to JS in June 2015 that he needed to roll over money from his
14 IRA account into another investment;

15 e) Misrepresenting to JS that the investment proceeds coming from his IRA would
16 be a "roll-over asset" and he would not have to pay taxes or penalties on those funds if he invested with
17 Caesar Investments;

18 f) Failing to disclose to JS that Beers and James Beers owned Caesar Investments;

19 g) Failing to disclose to JS that Beers and James Beers were facing the potential
20 loss of their home and that they would use at least \$24,698.51 of his \$26,000.00 investment funds to pay
21 their personal debts and living expenses, including their \$23,547.61 debt to Wells Fargo to avoid the
22 then-scheduled foreclosure of their home;

23 h) Failing to disclose to MK that Respondents would use at least \$3,352.88 of his
24 \$3,700.00 investment funds to dine in restaurants, go to a salon, and pay Beers' and James Beers'
25 American Express bill; and

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i) With respect to DR's investment of October 2015, failing to disclose that Respondents would use at least \$19,227.19 of his \$39,000.00 investment funds to make cash withdrawals; to write a \$5,000.00 check to James Beers; to make a \$3,000.00 wire transfer to another relative of Beers; and to make a \$2,484.60 mortgage payment and a \$2,354.64 payment to American Express.

63. This conduct violates A.R.S. § 44-1991.

VII.

CONTROL PERSON LIABILITY PURSUANT TO A.R.S. § 44-1999

64. From at least April 1, 2014, through at least October 6, 2015, Beers and James Beers have been and/or held themselves out as the members and managers of Caesar Investments.

65. Further, during that time period, Beers and James Beers each owned a fifty percent (50%) interest in Caesar Investments.

66. From at least April 1, 2014, through at least October 6, 2015, Beers and James Beers directly or indirectly controlled Caesar Investments within the meaning of A.R.S. § 44-1999. Therefore, Beers and James Beers are jointly and severally liable to the same extent as Caesar Investments for its violations of A.R.S. § 44-1991 during that time period.

VIII.

VIOLATION OF A.R.S. § 44-3151

(Transactions by Unlicensed Investment Advisers)

or Investment Adviser Representatives)

67. From at least April 1, 2014, through at least October 6, 2015, Beers and Caesar Investments transacted business in Arizona as investment advisers or investment adviser representatives while not licensed or in compliance with Article 4 of the IM Act.

68. This conduct violates A.R.S. § 44-3151.

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IX.

VIOLATION OF A.R.S. § 44-3241

(Fraud in the Provision of Investment Advisory Services)

69. Beers and Caesar Investments engaged in a transaction or transactions within or from Arizona involving the provision of investment advisory services in which Beers and Caesar Investments, directly or indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts that were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; (iii) misrepresented professional qualifications with the intent that the client rely on the misrepresentation; or (iv) engaged in transactions, practices, or courses of business that operated or would operate as a fraud or deceit. Beers' and Caesar Investments' conduct includes, but is not limited to, the following:

a) Failing to disclose to DR, JS and MK in 2014 and 2015 when they invested that in its 2013 Order the Commission revoked Beers' securities salesperson registration and ordered her to cease and desist from violating the Securities Act and IM Act;

b) Failing to disclose to DR, JS or MK that Meridian Bank had an unpaid civil judgment against Beers;

c) With respect to DR's investments of April 2014 and October 2015, misrepresenting that DR could get his money back at any time;

d) With respect to DR's investment of October 2015, misrepresenting that there was no risk because Beers personally guaranteed his money;

e) Misrepresenting to JS in June 2015 that he needed to roll over money from his IRA account into another investment;

f) Misrepresenting to JS that the investment proceeds coming from his IRA would be a "roll-over asset" and he would not have to pay taxes or penalties on those funds if he invested with Caesar Investments;

g) Failing to disclose to JS that Beers and James Beers owned Caesar Investments;

h) Failing to disclose to JS that Beers and James Beers were facing the potential loss of their home and that they would use at least \$24,698.51 of his \$26,000.00 investment funds to pay their personal debts and living expenses, including their \$23,547.61 debt to Wells Fargo to avoid the then-scheduled foreclosure of their home;

i) Failing to disclose to MK that Respondents would use at least \$3,352.88 of his \$3,700.00 investment funds to dine in restaurants, go to a salon, and pay Beers' and James Beers' American Express bill; and

j) With respect to DR's investment of October 2015, failing to disclose that Respondents would use at least \$19,227.19 of his \$39,000.00 investment funds to make cash withdrawals; to write a \$5,000.00 check to James Beers; to make a \$3,000.00 wire transfer to another relative of Beers; and to make a \$2,484.60 mortgage payment and a \$2,354.64 payment to American Express.

70. This conduct violates A.R.S. § 44-3241.

X.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

1. Order Respondents to permanently cease and desist from violating the Securities Act and IM Act, pursuant to A.R.S. §§ 44-2032 and 44-3292;

2. Order Respondents to take affirmative action to correct the conditions resulting from Respondents' acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. § 44-2032 and 44-3292;

3. Order Respondents to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act, pursuant to A.R.S. § 44-2036;

4. Order Respondents to pay the state of Arizona administrative penalties of up to one thousand dollars (\$1,000) for each violation of the IM Act, pursuant to A.R.S. § 44-3296;

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5. Order that the marital community of Beers and James Beers be subject to any order of restitution, rescission, administrative penalties, or other appropriate affirmative action pursuant to A.R.S. § 25-215; and

6. Order any other relief that the Commission deems appropriate.

XI.

HEARING OPPORTUNITY

Each Respondent, including James Beers, may request a hearing pursuant to A.R.S. § 44-1972, 44-3212 and A.A.C. R14-4-306. **If a Respondent requests a hearing, the requesting Respondent must also answer this Notice.** A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. The requesting Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Kacie Cannon, ADA Coordinator, voice phone number (602) 542-3931, e-mail kcannon@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at <http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp>.

XII.**ANSWER REQUIREMENT**

Pursuant to A.A.C. R14-4-305, if a Respondent requests a hearing, the requesting Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the Commission's Internet web site at <http://www.azcc.gov/divisions/hearings/docket.asp>.

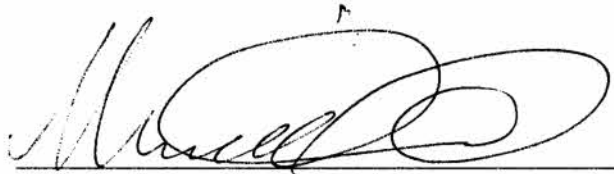
Additionally, the answering Respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to the Division at 1300 West Washington, 3rd Floor, Phoenix, Arizona, 85007, addressed to James D. Burgess.

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering Respondent or Respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When the answering Respondent intends in good faith to deny only a part or a qualification of an allegation, the Respondent shall specify that part or qualification of the allegation and shall admit the remainder. A Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated this 1st day of June, 2017.



Mark Dinell
Assistant Director of Securities